

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re application of

Ricky W. Selby

Serial No. 10/676,396

Filed: October 1, 2003

Title: Consumer Goods Retail Sale
Display Package

Examiner: David Fedei

Art Unit: 3728

Docket: KP-59

ResponseI hereby certify that this correspondence is being
facsimile transmitted to the United States Patent
and Trademark Office (Fax No. 703-872-9306) on

April 5, 2005.

Barbara Cecere

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This paper is responsive to the Office Action dated February 24, 2005.

Claims 1-8 remain for consideration.

1. This paragraph is not understood. Principally, there is no reason to state that "limitations from the specification will not be read into the claims". Furthermore, that statement is absolutely incorrect and does not represent the law. Specifically, MPEP 2173.05(q) states that the "meaning of words used in the claim is not construed in a 'lexicographic' vacuum, but in the context of the specification and drawings." Furthermore, MPEP 2111.01 II states, in several places, that "In construing claim terms, the general meanings gleaned from reference sources, such as dictionaries, must always be compared against the use of the terms in context, and the intrinsic record must always be consulted to identify which of the different possible dictionary meanings is most consistent with the use of the words by the inventor.... The ordinary and customary meaning of a term may be evidenced by a variety of sources...including: ...dictionaries...and the written description, the drawings, and the prosecution history." The statement in the rejection quoted above is patently incorrect as is seen in MPEP 2173.05(a)(1): "During patent

examination, the pending claims must be given the broadest interpretation consistent with the specification."

2,3. Claims 7 and 8 are rejected as anticipated by Calcerano. Calcerano discloses what is described at page 1, lines 8-16 as a blister package or a clam shell package. Having stated that the prior art includes clam shell and blister packages, the claims cannot be construed, under any reasonable interpretation consistent with the specification, to include blister packages or clam shells, so long as there is language in the claim that is inconsistent therewith. Items 28 in Calcerano are receptacles (column 2, line 36). Items 26 and 26' are not openings, they are "spaced side portions" (column 2, line 43). Thus the allegation of what Calcerano shows is incorrect.

Claim 7 includes the word "frame" in lines 1, 4, 10 and 12. Merriam-Webster's Collegiate Dictionary, Eleventh Edition, defines frame, inter alia, as "an open case or structure made for admitting, enclosing, or supporting something...". Certainly the frame having openings therein in the description and drawings in the specification do not indicate a blister pack or clam shell. Instead, the frame constitutes an open structure.

The terms "opening" and "openings" appear in lines 2, 3, 8 and 13 of claim 7. The same dictionary defines "opening" inter alia, as "something that is open: as a(1): breach, aperture". Thus, the receptacles 28 do not fit the plain meaning of the word "opening".

The words "frame", "opening" and "openings" are in claims 7 and 8, there is no need to reach to the specification for them. However, the interpretations of those words must be consistent with the specification (MPEP 2173.05(a)). As stated on page 2 of the specification herein, one object is "a product package which allows the product to be...touched by consumers". On lines 20 and 21 there is reference to "a restrained product to remain contained in a package, properly oriented for intended consumer...handling." Interpreting the words "frame", "opening" and "openings" in a manner to include a blister package would be plainly contrary to that object and that definition.

For the foregoing reasons, reconsideration and allowance of claims 7 and 8 over Calcerano is hereby respectfully requested.

4. Claims 1-8 are rejected as anticipated by (sic) Chawla. In Chawla, reference 3 is not product items, but open-faced blisters (column 4, line 23). The first full sentence on page 3 of the rejection is not understood, particularly "a front face defined by the top of member intended to be viewed by consumers". The second full sentence "The frame has one or more openings defined by blisters 3..." is inconsistent with the dictionary definition of "openings" and with the meaning of the term "openings" in the specification herein, which is fully consistent with the dictionary definition. A blister is not an opening.

If the blister 3 is the opening, then the retainers "(any of 6, 7 or 9)", do not extend from the frame as called for in the claims, but rather extend from the openings. This is not a correct reading of the claim, in plain, ordinary meaning of the English language. Such a construction is impermissible. The statement "The card can be said to restrain the product from rearward movement to the extent that enough force to dislodge the product from the retainer yet not destroy the card 8 would be capable of fulfilling this function. Does that mean that "enough force...would be capable of fulfilling this function"? The construction of Chawla is impermissible since it states "The cover sheet may be of either a push-through or peelable type. For a push-through type of pack, the cover sheet may comprise a heat-seal-coated aluminum foil." (Column 3, lines 59 and 62). If it is a push-through type, it is not a restraint; if it could be either, then it does not teach a restraint; further, it is referred to only as a seal and the drawings indicate that it would not act as a restraint. The construction given to Chawla is conjecture that is inconsistent with the disclosure of Chawla.

Furthermore, as stated in paragraphs 2,3 hereinbefore, the dictionary meaning of "frame" and the dictionary meaning of "opening" are consistent with the specification and drawings herein, and the construction taken with respect to Chawla ignores the meaning of the word "frame" and ignores the meaning of the

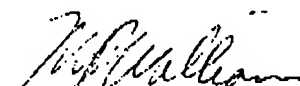
word "opening". This argument is fully set forth in paragraphs 2,3 and will not be repeated further here.

All the art is blister packages: customers cannot touch the entrained product!

For the foregoing reasons, reconsideration and allowance of claims 1-8 is hereby requested.

5,6. Should the foregoing not be persuasive in any respect, a telephone call is earnestly solicited.

Respectfully submitted,



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